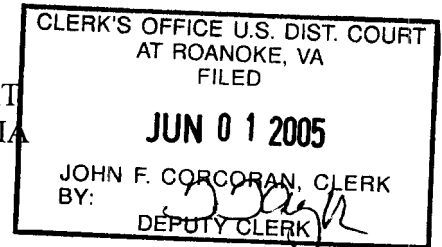


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION



DAVID K. ROBINSON, SR.,

Plaintiff,

v.

THE PEPSI BOTTLING GROUP, INC.,

Defendant.

Civil Action No. 7:05CV00049

**FINAL ORDER**

By: Hon. Glen E. Conrad  
United States District Judge

This case is before the court on defendant's motion to dismiss pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff filed a warrant in debt in the Roanoke City General District Court on December 28, 2004, seeking damages resulting from the defendant's alleged refusal to pay first party disability benefits. On January 27, 2004, the defendant filed its notice of removal to the United States District Court. The court granted the defendant's motion for more definite statement on March 4, 2005, ordering the plaintiff to file an amended complaint within ten days of that order. The plaintiff has not filed an amended complaint or any other response to the court's order. On May 13, 2005, the defendant filed this motion to dismiss for failure to prosecute and failure to comply with the court's March 4, 2005 order. In fact, the plaintiff has taken no action with regard to this case since filing the original warrant in debt.

A district court may, upon the motion of the defendant, dismiss an action for failure of the plaintiff to prosecute the action or to comply with any order of the court. Fed. R. Civ. P. 41(b). In this case, the plaintiff failed to file an amended complaint as directed by the court. Furthermore, the plaintiff has filed no response to any motion filed by the defendant and has taken no action on the case since December 28, 2004 when he filed the original warrant in debt.


Therefore, because the plaintiff has failed to comply with this court's order and has failed to prosecute this action, it is hereby

ORDERED

that the defendant's motion is GRANTED. It is further ORDERED that this case shall be and hereby is dismissed without prejudice.

The Clerk is directed to strike the case from the active docket of the court, and to send a certified copy of this Order to counsel for the plaintiff and counsel for the defendant.

ENTER: This 1<sup>st</sup> day of June, 2005.

  
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United States District Judge